

PATENT COOPERATION TREATY
PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
 (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference HJS-37-PCT	FOR FURTHER ACTION	
		See Form PCT/IPEA/416
International application No. PCT/DE2004/001888	International filing date (<i>day/month/year</i>) 26.08.2004	Priority date (<i>day/month/year</i>) 19.09.2003
International Patent Classification (IPC) or national classification and IPC A61F2/00		
Applicant HJS GELENK SYSTEM GMBH		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising: <ul style="list-style-type: none"> a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of _____ sheets, as follows: <ul style="list-style-type: none"> <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:
<input checked="" type="checkbox"/> Box No. I Basis of the report
<input type="checkbox"/> Box No. II Priority
<input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/> Box No. IV Lack of unity of invention
<input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/> Box No. VI Certain documents cited
<input checked="" type="checkbox"/> Box No. VII Certain defects in the international application
<input type="checkbox"/> Box No. VIII Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/DE2004/001888

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:

 - international search (Rule 12.3 and 23.1(b))
 - publication of the international application (Rule 12.4)
 - international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

the international application as originally filed/furnished
 the description:
 pages 1–5 _____ as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
 the claims:
 nos. 1–9 _____ as originally filed/furnished
 nos.* _____ as amended (together with any statement) under Article 19
 nos.* _____ received by this Authority on _____
 nos.* _____ received by this Authority on _____
 the drawings:
 sheets 1/1 _____ as originally filed/furnished
 sheets* _____ received by this Authority on _____
 sheets* _____ received by this Authority on _____
 a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. The amendments have resulted in the cancellation of:

the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (*specify*): _____
 any table(s) related to sequence listing (*specify*): _____
4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (*specify*): _____
 any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

Box No. V	International application No. PCT/DE2004/001888
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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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1. Statement

Novelty (N)	Claims <u>2, 4-8</u>	YES
	Claims <u>1, 3, 9</u>	NO
Inventive step (IS)	Claims _____	YES
	Claims <u>1-9</u>	NO
Industrial applicability (IA)	Claims <u>1-9</u>	YES
	Claims _____	NO

2. Citations and explanations (Rule 70.7)

1. The present report makes reference to the following documents:

D1: US-A-6 099 570 (LIVET ET AL)
 8 August 2000 (2000-08-08)

D2: US-B1-6 312 471 (KUBEIN-MEESENBURG DIETMAR ET AL)
 6 November 2001 (2001-11-06)

D3: DE 27 42 464 A1 (PFAUDLER-WERKE AG; PFAUDLER-WERKE AG, 6830 SCHWETZINGEN; PFAUDLER-WERK)
 22 March 1979 (1979-03-22)

D4: DE 44 28 290 A1 (KUBEIN-MEESENBURG, DIETMAR, PROF. DR., 37547 KREIENSEN, DE; THEUSNER,)
 15 February 1996 (1996-02-15).

2. The present application fails to satisfy the requirements of PCT Article 33(1) because the subject matter of claim 1 lacks novelty (PCT Article 33(2)). Document **D1** discloses (the reference signs relate to said document) an artificial joint (see figure 2) with a condyle 5 and a joint socket 3 and 10, consisting of a socket part 10 and an inlay 3, the associated functional surfaces 50 and 31 thereof being

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Box No. V **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

functionally interconnected, at least one functional surface being of an aspherical design (see figure 2) and the orbital radii of the respective associated functional surfaces being mutually divergent in a main functional plane opposite a secondary functional plane, which is rotated by 90° relative to the main functional plane, and, for the adaptation of the artificial joint to suit individual patients, at least one of the functional surfaces can be secured in different positions relative to the respective associated joint socket or the condyle (in particular by the selection of one of the pins shown in figure 3).

3. The features of claims 3 and 9, likewise, are known from **D1** (see figure 2 and column 4, lines 37 and 38). Therefore, said claims likewise fail to satisfy the requirements of PCT Article 33(2).

4. Claims 2 and 4 to 8 contain no features which, combined with the features of any claim to which they refer, meet the PCT requirements for inventive step (PCT Article 33(3)).

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Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

5. A new claim 1, relating in a general manner to an artificial joint, should be delimited over **D1**. In restricting the claim to an artificial hip joint, the disclosure should be delimited over **D4** (PCT Rule 6.3(b)).